IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 1994 of 1995

Between:

The Project Manager Singareni Colleries Co. Ltd
P.O. Coal Chemicals Complex, Dist. Adilabad.

..... PETITIONER

AND

1 Industrial Tribunal-I, Chandravihar, M.J.Road, Hyderabad,
rep. by its Presiding Officer.
2 The Vice President, S.C.Workers' Union (AITUC)
P.O. Coal Chemicals Complex, Dist Adilabad (A.P) representing sri

Usman Khan, motor mechanic.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order, direction or a writ particularly one in the nature of Writ of Certiorari after calling for the records from the first respondent in I.D.No. 9 of 1991 and quash the order passed therein dated 21-2-1994.

Counsel for the Petitioner: MR.K.SRINIVASAMURTHY

Counsel for the Respondent No.1: GP for Social Welfare and Labour.

Counsel for the Respondent No.2 : None appeared.

The Court made the following:

O R D E R:

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This Writ Petition is filed by the Management of Singareni Collieries Company Limited challenging the Award dated 21.2.1994 passed by the Industrial Tribunal-I, Hyderabad in I.D.No.9 of 1991.

2. At the instance of the Union, the following matter was referred by the Government of India by its Order No.L-22012(197)/90-IR(C.II), dated 8.4.1991 for adjudication:

> *"Whether the action of the management of Singareni Collieries Company Limited, Coal Chemical Complex, Naspur, in not promoting Sri Usman Khan from the post of Motor Mechanic Cat.V to Motor Mechanic Cat.VI w.e.f. 15.10.1987 is justified? If not, to what relief is the workman entitled to?"*

3. The Tribunal after adjudicating the matter, held that the Management in not promoting Sri Usman Khan from the post of Motor Mechanic Category-V to Motor Mechanic Category-VI with effect from 15.10.1987 is not justified and accordingly passed the Award dated 21.2.1994. The said Award is assailed before this Court.

4. It is the contention of the management that for promoting the employee, the post must arise permanently, inasmuch as, in the instant case, one Mr.Sarvar was already holding the post of Motor Mechanic and he was sent on transfer and therefore there was no clear vacancy to take the eligible employees. Under those circumstances, the question of promoting the petitioner without there being any regular vacancy does not arise. Further it is stated that by virtue of settlement between the workmen and management, the petitioner was promoted to Category-VI in 1990. Under those circumstances, the Tribunal ought not to have allowed the reference in favour of the workmen. Thus, it is liable to be set aside.

5. Even though notice is served, nobody appeared for the respondents.

6. I have perused the Award under challenge. It is born out by record that Usman Khan is claiming the promotion to the post of motor mechanic from Category V to Category VI with effect from 15.10.1987. But, however he was promoted in the year 1990.

7. The question that falls for consideration is whether the petitioner is entitled for promotion with effect from 15.10.1987.

8. It is also born out by record that one Mr.Sarvar was holding the post of motor mechanic in Category-VI and he was transferred to some other establishment. But, there is no clear vacancy available for promotion. Simply because the petitioner has passed the qualifying tests, it cannot be contended that he is entitled for promotion automatically. The promotion is subject to availability of vacancy position. Inasmuch as, it is made out by the management in clear terms that there was no vacancy of motor mechanic, the question of giving promotion to the petitioner in category VI does not arise. Hence, the Tribunal has committed an error in directing the petitioner-management to promote the workman to category VI. Hence, the award

passed by the Tribunal is liable to be set aside and it is set aside.

9. Accordingly, the Writ Petition is allowed. No costs.

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G. BIKSHAPATHY, J

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Thursday the Twenty third day of September, Two Thousand and Four.

ASSISTANT REGISTRAR

Dated:23.9.2004,

ccm.

To:

1. The Project Manager Singareni Colleries Co. Ltd
P.O. Coal Chemicals Complex, Dist. Adilabad.

2 The Presiding Officer,Industrial Tribunal-I, Chandravihar, M.J.Road,

Hyderabad,
3. 2 CCs to the G.P. for Labour,High Court Buildings, A.P.Hyderabad(OUT)
4. 2 CD copies.